



STATE OF MAINE
COMMISSION ON GOVERNMENTAL ETHICS
AND ELECTION PRACTICES
135 STATE HOUSE STATION
AUGUSTA, MAINE
04333-0135

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May 15th, 2002

Minutes of the May 15th, 2002, meeting of the Commission on Governmental Ethics and Election Practices conducted telephonically pursuant to the authority of 21-A M.R.S.A. §1002, and coordinated from the Commission's office at 242 State Street, Augusta, Maine.

Participating Telephonically: Chair Alan F. Harding; Members Hon. James O. Donnelly, and Hon. Andrew Ketterer.

Present in Commission Office: Member Hon. David N. Ott; Director William C. Hain, III; and Counsel Phyllis Gardiner.

Chair Harding called the meeting to order at 10:37 a.m. In addition to the Commission Members and Staff participating telephonically and present in the Commission Offices, Mr. John Fink was present telephonically and Hon. Raymond Pineau was present in the Commission Office to participate in their respective agenda items and Mr. Richard Pelletier was present in the Commission Office as an observer and prospective participant.

The Commission considered items on the published agenda as follows:

Agenda Item #2A: Honorable Raymond G. Pineau; Maine Clean Election Act Appeal from Certification Denial [21A M.R.S.A. §1125(14)]

By his letter received May 2nd, 2002 (fax), Representative Pineau appealed the denial of his request for certification as a Maine Clean Election Act candidate as a result of having collected 14 of the required 50 qualifying contributions before submission of a declaration of intent as provided by 21A M.R.S.A. §1125(1).

Mr. Hain summarized the facts for the Commission's consideration and read a letter received by e-mail from Dr. William L. Reid, independent candidate for Maine House District 76. Counsel Gardiner provided a legal interpretation of the Commission's authority to grant case-by-case exceptions as limited to seed money issues. In this case, the Maine Clean Election Act criteria for certification explicitly require that a Declaration of Intent be signed and filed with the Commission before qualifying contributions are solicited. Therefore, it would not be appropriate for the Commission to use the case-by-case exception authority as a vehicle for relief in this situation. The Commission would have to find that the applicant had complied with the certification requirements. Members inquired about the appeal procedures and the burden of proof requirements.

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Mr. Ott moved and Mr. Donnelly seconded to deny Representative Pineau's appeal and to uphold the statutory provisions requiring the filing of a declaration of intent before collecting qualifying contributions. Chair Harding opened the floor for discussion. Mr. Ketterer inquired about the public policy prohibiting the collection of checks before filing a declaration of intent. Counsel Gardiner explained the lack of legislative history supporting citizen-initiated legislation. Mr. Hain explained the Staff's practice of providing candidates an opportunity to cure a "premature qualifying contribution collection" problem when they had requested certification before the end of the qualifying period and sufficient time remained to permit the collection of sufficient qualifying contributions within the remaining qualifying period.

Mr. Pelletier suggested that, since Representative Pineau had submitted his Request for Certification on April 9th, had the Staff denied the request by April 12th, there would have been time to cure the defect by enabling Representative Pineau to collect the needed 14 additional qualifying contributions. Counsel Gardiner speculated that the purpose of the 3-day certification period provided by the MCEA is to expedite the process of getting public funds to qualified candidates, not to help unqualified candidates cure problems in the qualification process.

Chair Harding suggested that, if the Commission possessed a court's powers of equity, it would be possible to give a candidate in Representative Pineau's situation some period of time to cure the problem, but the Commission does not have the power to fashion some form of equitable remedy. While the deficiency might have been cured if the candidate had been given more timely notification, Chair Harding stated that he believed he is without power to do anything other than to support the motion.

Upon an individual voice vote of Commission Members, all voted in the affirmative and the motion passed unanimously.

Agenda Item #2A: Mr. John Fink; Maine Clean Election Act Appeal from Certification Denial [21A M.R.S.A. §1125(14)]

By his letter dated May 2nd, 2002, Mr. Fink appealed the denial of his request for certification as a Maine Clean Election Act candidate as a result of having submitted his request for certification on April 18, 2002, two (2) days after the end of the qualifying period as provided by 21A M.R.S.A. §1122(8)(B) and Commission Rules, Ch. 3, §4(1)(A).

Mr. Fink explained to the Commission his reliance upon the statement on page 23 of the Commission's Guide to the Maine Clean Election Act that the candidate must submit qualifying contributions to the Commission during the qualifying period together with the request for certification. Knowing that the qualifying contributions could be submitted to the Voter Registrar as late as April 16th, he assumed he could then submit the Request for Certification together with the qualifying contributions thereafter to the Commission.

Mr. Hain read a letter from Robert H. Crosthwaite, candidate for House District 127 that had been submitted by telefax on May 14th, 2002, for the Commission's consideration. Mr. Pelletier stated that the reason for the Declaration of Intent is to start the qualifying process and the intent



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of the filing deadline is to stop collecting qualifying contributions, which had been done in this case.

Mr. Ott moved and Chair Harding seconded for discussion to deny Mr. Fink's appeal because he had not satisfied the statutory requirement for applying as a Maine Clean Election Act candidate by the required filing deadline. Mr. Ott inquired of Counsel Gardiner whether there was any discretionary power in the Commission in this case different from Representative Pineau's case. Counsel Gardiner responded that the Commission did not have any waiver authority or equitable power in this case any different than in the previous case.

Chair Harding reiterated the remarks he made in the previous case regarding the Commission's equitable powers relative to that of a court of law, acknowledged that the Candidate's Guide might have had better language but, lacking powers of equity, stated that the Commission is left to determine if the requirements of the statute had been met. Since Mr. Fink had not filed with the Commission within the period specified by statute, the Commission's hands are tied and no other action than to deny the appeal is possible.

Mr. Ketterer reiterated the comments he made in the previous case, adding that it is public policy to encourage government agency staffs to help the public and a decision that might suggest that the staff may have misadvised an inquirer would not be helpful of staff.

Upon an individual voice vote of Commission Members, all voted in the affirmative and the motion passed unanimously.

Agenda Item #1: Ratification of Minutes

Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to adopt the minutes of the May 1st, 2002 meeting as printed.

Agenda Item #3: Leo Delicata, Lobbyist for Legal Services for the Elderly, Inc., Late Lobbyist Monthly Disclosure Report

By letter dated May 9th, 2002, Patricia M. Dugal, Finance Manager, appealed on behalf of Mr. Delicata based upon the mailing of the report on April 12th in Augusta that should have been received by the April 16th due date, but had not been received until April 18th, 2 days late. Mr. Donnelly moved, Mr. Ketterer seconded, and Members voted unanimously to waive the penalty in full.

Agenda Item #4: Leslie R. Johnson; Late Candidate Registration Form

Mr. Hain explained that Ms. Johnson had been notified of the registration requirements twice before registering on May 6th, 28 days after the due date of April 8th. Mr. Ketterer moved, Mr. Donnelly seconded, and Members voted unanimously to assess a \$10.00 forfeiture for the candidate's late registration.



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There being no further business, on motion and unanimous vote, the Commission adjourned at 12:30 p.m.

Respectfully submitted,

William C. Hain, III
Director